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5 Attorneys for Plaintiff,  
6 KARA STEWART

7 **UNITED STATES DISTRICT COURT**

8 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

10 KARA STEWART, an individual

Case No.: 3:24-cv-01775-RFL

11 Plaintiff,

**RESPONSE TO ORDER TO SHOW  
CAUSE RE: CITIZENSHIP OF  
DEFENDANT FAY SERVICING, LLC  
AND PROOF OF SERVICE**

12 v.

13 FAY SERVICING, LLC; and DOES 1 through  
14 10, inclusive,

15 Defendants.

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2 **I. INTRODUCTION**

3 Plaintiff hereby submits this Response to the Court's Order to Show Cause Re:  
 4 Citizenship of Fay Servicing, LLC and Proof of Service.

5 **II. STATEMENT OF RELEVANT PROCEDURAL FACTS**

6 Plaintiff filed this action and an Ex Parte Application for Temporary Restraining Order on  
 7 March 22, 2024. (Dkt. 1, 4.) Plaintiff alleged state law claims for violation of the Homeowner's  
 8 Bill of Rights and an unfair business claim, and jurisdiction was premised on diversity  
 9 jurisdiction pursuant to 28 U.S.C. § 1333. On March 25, 2024, the Court issued an Order to Show  
 10 Cause Re: Citizenship of Defendant Fay Servicing, LLC and Proof of Service. (Dkt. 12.) Plaintiff  
 11 was ordered to file a written response or First Amended Complaint by 12:00 pm on March 26,  
 12 2024. On March 25, 2024, Plaintiff filed a First Amended Complaint which incorporated federal  
 13 questions and asserted federal question jurisdiction and supplemental jurisdiction pursuant to 28  
 14 USC §§ 1331, 1337.

15 **III. PLAINTIFF'S AMENDED COMPLAINT PROPERLY ASSERTS FEDERAL  
 16 QUESTION JURISDICTION.**

17 The district courts shall have original jurisdiction of all civil actions arising under the  
 18 Constitution, laws, or treaties of the United States. 28 USC § 1331. In the case at hand, Plaintiff  
 19 has asserted three causes of action arising from Defendant's violations of 12 C.F.R. 1024.41. *See*  
 20 FAC, first through third causes of action. In addition, Plaintiff properly asserts a related state  
 21 court violation of Business and Profession Code § 17200 based on Defendant's violations of 12  
 22 C.F.R. 1024.41. FAC at ¶ 73. In addition, pursuant to 28 USC 1337(a), this Court has jurisdiction  
 23 over Plaintiffs' claims for violation of California Civil Code §§ 2923.6, 2923.7, and the related  
 24 Business and Profession Code § 17200 violations which are premised on these statutes.

25 Pursuant to Rule 15(c), an amendment to a pleading relates back to the date of the original  
 26 pleading when "the amendment asserts a claim or defense that arose out of the conduct,  
 27 transaction, or occurrence set out—or attempted to be set out—in the original pleading". Fed.  
 28 Rule Civ. Proc. 15(c)(1)(B). In the case at hand, Plaintiff's claims for violation of 12 CFR

1 1024.41 are premised on the same conduct, transaction, or occurrence as the claims for violation  
 2 of California Civil Code 2923.6. Therefore, Plaintiff's claims for violation of 12 CFR 1024.41  
 3 relate back to the original filing date, thus curing any subject matter jurisdictional issues in the  
 4 underlying Ex Parte Application for Temporary Restraining Order.

5 **IV. DEFENDANT FAY HAS ENTERED THIS CASE THROUGH COUNSEL AND**  
 6 **HAS BEEN SERVED WIH ALL OPERATIVE DOCUMENTS.**

7 On the afternoon of March 22, 2024, Plaintiff's counsel was contacted by Regina  
 8 McLendon of Locke Lord LLP regarding this matter. Ms. McLendon indicated that she would  
 9 know Monday, March 25, 2024 if she'd be retained for the matter and inquired about the  
 10 allegations and jurisdictional issues of the Complaint. Ms. McLendon also made note of the  
 11 judge's suggestion that the parties come to a stipulation and indicated that she would take  
 12 additional information back to Fay Servicing for consideration. On March 25, 2024, Plaintiff's  
 13 counsel emailed Ms. McLendon about a thirty-day postponement of the foreclosure sale so that  
 14 the parties could resolve the issues identified in Plaintiff's Ex Parte Application for Temporary  
 15 Restraining Order. At 11:20 am on March 25, 2024, Ms. McLendon indicated that she could not  
 16 accept service of documents or ex parte notices in this litigation. Therefore, Plaintiff's counsel  
 17 hired a process server to personally serve Fay Servicing, LLC's agent for service of process with  
 18 Plaintiff's Complaint, Ex Parte Application, and the Court's Briefing Order. Then, at  
 19 approximately 1:00 pm PST, Plaintiff filed a First Amended Complaint (Dkt. 14) and Plaintiff's  
 20 Supplemental Memorandum of Points and Authorities in Support of Ex Parte Application for  
 21 Temporary Restraining Order (Dkt. 15), which was included in the documents to be served  
 22 through Wyatt Process Service, LLC. Thereafter, Defendant Fay Servicing, LLC filed a Response  
 23 to the Ex Parte Application. (Dkt. 17).

24 On March 26, 2024, I emailed Plaintiff's First Amended Complaint (Dkt. 14) and  
 25 Supplemental Memorandum of Points and Authorities in Support of Ex Parte Application for  
 26 Temporary Restraining Order (Dkt. 15) to Regina McLendon (rmclendon@lockelord.com).

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1       **V. CONCLUSION**

2           For the reasons set forth herein, good cause exists to grant the instant ex parte application  
3 and restrain Defendant from proceeding with the Trustee's Sale scheduled for March 27, 2024,  
4 until further order from this Court.

5           DATED: March 26, 2024

6           Respectfully submitted,

7           SHAPERO LAW FIRM, PC

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9           /s/ Jessica Galletta  
10           Sarah Shapero, Esq.  
11           Jessica Galletta, Esq.  
12           Attorneys for Plaintiff  
13           KARA STEWART

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## **PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action. My business address is 100 Pine St., Ste. 530, San Francisco, CA 94111.

On March 26, 2024, I served the foregoing document described as:

**RESPONSE TO ORDER TO SHOW CAUSE RE: CITIZENSHIP OF DEFENDANT FAY SERVICING, LLC AND PROOF OF SERVICE**

On all interested parties in this action by email as stated on the following parties via the court's ECF system:

## Regina J. McClendon

## Managing Partner, San Francisco Office

Locke Lord LLP

101 Montgomery Street, Suite 1950

San Francisco, CA 94104

T: 415-318-8804

F: 415-707-2186

rmcclelland@lockelord.com

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on March 26, 2024 at Charlotte, North Carolina.

/s/ Jessica Galletta

Jessica Galletta